



**JAMES K. HAHN**  
CITY ATTORNEY

August 3, 2000

Mr. John H. Thompson  
Associate Director for Decennial Census  
Bureau of the Census, Building 2, Room 3586  
Suitland and Silver Hill Roads  
Suitland, Maryland 20223

Re: The Secretary's Proposed Rule to Delegate the Decision to Use  
Corrected Census Data to the Director of the Census Bureau

Dear Mr. Thompson:

Thank you for giving me the opportunity to voice my opinion on this very important proposed rule. It is an excellent idea to delegate to the Director of the Census Bureau the authority to resolve the issue of whether corrected data should be used to tabulate the populations reported to the States and localities pursuant to 13 U.S.C. 141(c). I completely agree with the Secretary that the scientific experts at the Census Bureau, not politicians, are in the best position to make such a crucial decision.

I have learned that the Secretary's proposal to delegate the final decision to the Director of the Census Bureau has been under attack from some sources who claim that the Secretary does not have the authority to divest himself of the responsibility vested in him by Congress. This accusation is not only absurd, but unfounded. The Secretary of Commerce remains ultimately responsible for all the functions and duties imposed on him by law. Section 4 of Title 13, provides that, "[t]he Secretary . . . as he deems necessary to carry out such functions and duties, . . . may delegate the performance of such functions and duties and the authority to issue such rules and regulations to such officers and employees of the Department of Commerce as he may designate."

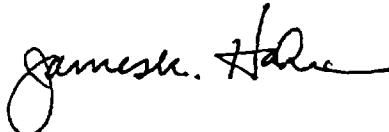
The statutory language unquestionably provides that the Secretary has the authority to delegate to the Director of the Census Bureau the final decision pertaining to the issue of the use of corrected data for redistricting purposes if necessary. The proposed rule made it clear that accurate census data can only be

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Page 2.

obtained if there is no political interference in the decision-making process. The decision should be based entirely on operational and methodological findings. Since the professional experts at the Census Bureau have spent years studying and perfecting census data and procedures, they are the ones who will make the most informed decision.

Nor is the proposed rule illegal; nothing in Section 4 of Title 13 or its legislative history evidences a congressional intent to limit the Secretary's delegation authority. In United States v. Bronk, 604 F. Supp. 743 (1985), the Court upheld a prosecutorial certificate issued by the acting Deputy Attorney General, stating that it was incorrect to assume "nondelegability in those situations in which Congress has not spoken explicitly and thereby insisted upon personal performance . . ." by the head of a department. The Census Act specifically states that the Secretary may delegate the authority to those he chooses to designate. The statute does not leave room for any other interpretation of congressional intent. It is certainly legal for the Secretary to do what's necessary to efficiently carry out his duties. Questioning the legality of the proposed rule is a poor last minute attempt to prevent the distribution of more accurate data by those opposing the use of modern statistical methods.

Very truly yours,



JAMES K. HAHN  
City Attorney

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